

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Winston Roberto ALI-Gutierrez,

Defendant

Magistrate Judge

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA


COMPLAINT FOR VIOLATION OF:

BY DEPUTY
Title 8, U.S.C., Section 1326
Deported Alien Found in the
United States

The undersigned complainant, being duly sworn, states:

On or about **December 5, 2007** within the Southern District of California, defendant, **Winston Roberto ALI-Gutierrez**, an alien, who previously had been excluded, deported and removed from the United States to **Mexico**, was found in the United States, without the Attorney General or his designated successor, the Secretary of the Department of Homeland Security (Title 6, United States Code, Sections 202(3) and (4), and 557), having expressly consented to the defendant's reapplication for admission into the United States; in violation of Title 8 United States Code, Section 1326.

And the complainant further states that this complaint is based on the attached statement of facts, which is incorporated herein by reference.


SIGNATURE OF COMPLAINANT
James Trombley
Senior Patrol Agent

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE, THIS 7th DAY OF DECEMBER, 2007


Ruben B. Brooks
UNITED STATES MAGISTRATE JUDGE



PROBABLE CAUSE STATEMENT

On December 5, 2007, Senior Patrol Agent F. Stranahan, and Border Patrol Agent E. Swickheimer were conducting uniformed linewatch duties in the area known as Windmill Canyon. This area is approximately three miles east of the Otay Mesa, California, Port Of Entry and two miles north of the United States/Mexico International boundary.

At approximately 5:30 p.m. a seismic intrusion device was activated in Windmill Canyon. Border Patrol Agent C. Peterson, operating an infrared scope on the Otay Truck Trail observed three individuals walking west in Windmill Canyon. Agents Stranahan and Swickheimer responded to the area where they waited for the group. The three walked towards Agent Stranahan and he stepped out from behind cover and identified himself as a United States Border Patrol Agent and conducted an immigration inspection on the group. Each of them, including one later identified as the defendant **Winston Roberto ALI-Gutierrez**, admitted to being citizens of Mexico illegally present in the United States. Agent Stranahan placed all three under arrest and arranged for transportation to the Chula Vista Border Patrol Station for processing.

Routine record checks of the defendant revealed an immigration history. The defendant's record was determined by a comparison of his criminal record and the defendant's current fingerprint card. Official immigration records of the Department of Homeland Security revealed the defendant was previously deported to **Mexico** on **June 2, 2006** through **Nogales, Arizona**. These same records show that the defendant has not applied for permission from the Attorney General of the United States or his designated successor, the Secretary of the Department of Homeland Security, to return to the United States after being removed.